

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SELLMAR G. HOWELL
Claimant

VS.

SUNSHINE BISCUITS, INC.
Respondent

AND

TRANSPORTATION INSURANCE COMPANY
Insurance Carrier

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Docket No. 236,967

ORDER

Respondent and its insurance carrier appealed the May 23, 2000 Award entered by Administrative Law Judge Steven J. Howard. The Appeals Board heard oral argument on November 3, 2000.

APPEARANCES

David R. Hills of Lenexa, Kansas, appeared for claimant. Michael H. Stang of Overland Park, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award. The record does not include the medical records attached to claimant's brief to the Appeals Board.

ISSUES

This is a claim for injuries to the right arm and shoulder as the result of a series of micro-traumas that claimant sustained while working for respondent. For purposes of computing workers compensation benefits, Judge Howard found May 19, 1998, as the appropriate date of accident and awarded claimant benefits for a 15 percent functional impairment to the right upper extremity at the shoulder level.

Respondent and its insurance carrier contend Judge Howard erred. They argue that claimant failed to prove that she sustained any permanent injury to her right arm or shoulder as a result of working for respondent.

The only issues before the Appeals Board in this review are:

1. Did claimant permanently injure her right upper extremity while working for respondent through May 1998?
2. If so, what is the nature and extent of that injury and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds:

1. The Appeals Board affirms the Judge's finding that claimant injured her right arm and shoulder while working for respondent in May 1998. During that time period, claimant developed symptoms in her right arm and shoulder as respondent's cracker line was malfunctioning, which required claimant to repetitively reach and lift packages of crackers. The Appeals Board finds that it is more probably true than not that claimant developed medial epicondylitis and rotator cuff tendinitis as a result of her work activities.
2. The Appeals Board also affirms the Judge's finding that claimant's testimony was credible and persuasive. Therefore, the Board concludes that the right arm and shoulder symptoms that claimant now experiences are different than those related to her earlier bilateral carpal tunnel syndrome and neck injuries.
3. Finally, the Appeals Board affirms the Judge's finding that claimant has sustained a 15 percent functional impairment to the right upper extremity at the shoulder level. That finding is supported by the testimony of board-certified orthopedic surgeon Edward J. Prostic, M.D. After considering the medical opinions provided by Theodore L. Sandow, Jr., M.D., and Donald T. Mead, M.D., the Appeals Board finds Dr. Prostic's opinions the most persuasive. Dr. Prostic had previously examined and evaluated claimant for the carpal tunnel syndrome and neck injuries and, therefore, was familiar with claimant's symptoms from those maladies.

In contrast, the Board is not persuaded by Dr. Sandow's reports that he understood or considered that claimant's present symptoms in her right arm, elbow, and shoulder were different from her earlier symptoms. Further, the Board is not persuaded by Dr. Mead's testimony as he was less than forthright.

4. The Board adopts the findings and conclusions set forth in the Award that are not inconsistent with the above and which are supported by the record.¹

AWARD

WHEREFORE, the Appeals Board affirms the May 23, 2000 Award entered by Judge Howard.

IT IS SO ORDERED.

Dated this ____ day of November 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David R. Hills, Lenexa, KS
Michael H. Stang, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director

¹ As pointed out by respondent and its insurance carrier, Judge Howard found that claimant prepared a form in Dr. Mead's office that listed right shoulder symptoms. But a close review of the Medical Record Patient Information form completed by claimant notes that she was complaining of pain in the right arm, right elbow, neck, and upper back. There is no indication in that document that claimant was complaining of right shoulder symptoms.